IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4993 OF 2006

Mrs.Rosy Mary Solman Joseph .. Petitioner.

V/s.

The Union of India & Ors. .. Respondents.

Mr.S.P.Saxena for the Petitioner.

Ms.Nisha Lulalani with Mr.N.D.Sharma for the Respondent No.1.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 22nd MARCH, 2007.

P.C.:

. Rule. Heard forthwith.

2. The petitioner in the instant case is the mother of the deceased Tony Joseph, who was in the service of the Army and died on 20th March, 2002, whilst in the active service. In terms of the Rules for family Pension notified by the Respondent, based on the Government Resolution dated 03.02.1998, as quoted in the communication dated 26th August,1988 at Annexure ‘A’ to the petition, it has been clarified that the parents who were wholly dependant on the Armed Forces Personnel, were and are included within the definition of the

family and would be entitled to family pension, provided the deceased Armed Forces Personnel had not left behind neither a widow nor a child and or widowed/ divorced daughter. The Central Government took a decision that the income criteria in respect of the parents and widowed/ divorced daughters shall be that their earnings is not more than 2550/- per month. In those cases the parents will get ordinarily family pension at 30% of the basic pay of the deceased Armed Forces Personnel subject to a minimum of Rs. 1275/- per month.

3. The petitioner applied for family pension vide communication dated 5th of July, 2005. The petitioner was informed that as the father of the deceased is a pensioner, both the parents cannot be treated as dependent on the deceased Armed Forces Personnel and hence, pension would not be available to her. It is on this ground, the petitioner approached this court.

4. In answer to the contention of the petitioner, a reply has been filed by Major Manish Mrinal, the Administrative Officer. The reference is made to C.C.S.Pension Rules No.7, which states that a government servant shall not earn two pension in the same continuous service.

5. We have heard the learned counsel for the petitioner, who raised twofold submissions. Firstly, it is an admitted position that the husband of the petitioner and the petitioner together are not having income of more than Rs. 2550/- per month. The husband of the petitioner was in the civil employment and he was drawing pension which is less than 2550/- per month. Ordinarily, the Rules pertains to the C.C.S. Pension Rules, are not applicable to the Armed Forces, who have their own pension rules. Even assuming that the C.C.S.Pension Rules No.7 is applicable, as reproduced by the respondents themselves. it only sets out that the government servant shall not earn two pensions in the same continuous service. In the instant case, the pension released by the government to the petitioner on the basis of the civil service rendered in a government department and not armed force and would not be continuous service for the purpose of drawing family pension. Hence, the said ground has to be rejected as it is not sustainable in law.

6. Even otherwise, insofar as the petitioner is concerned, she is not having any income and at the highest she was dependent on the income of her husband, who was drawing pension of not more than Rs. 2550/- per month. The petitioner herself is not drawing any

pension in terms of the rules framed by the Army and as such she would be entitled to family pension in terms of paragraph (ii) of the communication dated 26th of August, 1998.

7. For the aforesaid reasons, in our opinion, the petition has to be allowed and in the light of that Rule is made absolute in terms of prayer clauses (a) and (b). The respondents are directed to pay pension alongwith the arrears in any event not later than six months from today.

8. If the amount is not paid within six months, it would carry interest rate at the rate of 12% from the date the amount of family pension becomes due till its payment/ realisation.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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